

**PETITION FOR WITHDRAWAL OF ABANDONMENT UNDER 37 CFR 1.181(a) AND
ALTERNATIVE PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

First named inventor	:	Katsumi Ochiai
App. No.	:	10/795,765
Filed	:	March 8, 2004
Title	:	REMOTE CONTROL SYSTEM FOR MARINE DRIVE
Examiner	:	Edwin L. Swinehart

Group Art Unit: 3617

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

March 13, 2008

(Date)

/Michael Guillana/

Michael A. Guillana, Reg. No. 42,611

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

The above-identified application may have fallen abandoned for failure to file a timely and proper Request for Continued Examination (RCE) with the response filed on February 22, 2008 in response to the Office Action mailed on August 22, 2008, which set a three month period for response. The abandonment date of this application would be February 22, 2008 (i.e., the expiration of the date of the period set for response, plus any extensions of time obtained therefore).

**APPLICANT HEREBY PETITIONS FOR WITHDRAWAL OF ANY ABANDONMENT OF THIS
APPLICATION UNDER 37 CFR 1.181(a)**

Applicant hereby requests withdrawal of the holding of abandonment of the above-identified Application, although the Applicant has not yet been notified of abandonment nor has the Patent Office issues a Notice of Abandonment.

The potential abandonment of the present Application may result from Applicant's Amendment filed February 22, 2008 (copy attached) in response to a Final Office Action dated August 22, 2007. Applicant's February 22, 2008 response did not include an express Request for Continued Examination (RCE). Rather, Applicant's response included a Conditional RCE.

MPEP § 706.07(a), ¶ III (C) (page 700-98, 8th ed., rev. 5) indicates that the Patent Office will treat a “conditional” RCE as if an RCE had been filed. In particular, the MPEP states:

If a submission is accompanied by a "conditional" RCE and payment of the RCE fee under 37 CFR 1.17(e) (**i.e., an authorization to charge the 37 CFR 1.17(e) fee to a deposit account in the event that the submission would not otherwise be entered**), the Office will treat the "conditional" RCE and payment as if an RCE and payment of the fee set forth in 37 CFR 1.17(e) had been filed.

MPEP § 706.07(a), ¶ III (C) (emphasis added).

Applicant notes that this appears to be the only mention of a “Conditional RCE” in the entire MPEP. There is no definition of what constitutes a “Conditional” RCE. However, this section appears to give an explanation of an acceptable “Conditional” RCE, as follows:

(i.e., an authorization to charge the 37 CFR 1.17(e) fee to a deposit account in the event that the submission would not otherwise be entered)

Applicant submits that this parenthetical, “i.e.” statement does not include *any express relation to an RCE*. It is, however, *conditional*. On the other hand, there are no indications in the MPEP that show the absolute minimum requirements for a “Conditional” RCE. Finally, Applicant notes that the present requirements for filing RCEs are entirely formalistic. Thus, Applicant submits that the MPEP, by way of this example, allows flexibility in the wording of a conditional RCE and allows for authorizations to deduct fees from deposit accounts to be a “Conditional” RCE.

Applicant’s February 22, 2008 Amendment included an express authorization for the Office to deduct ANY fees, from Deposit Account No. 11-1410. Thus, Applicant’s statement satisfies the requirement of authorization to use a deposit account.

Applicant’s February 22, 2008 Amendment also included the statement that the Office can charge ANY FEES, including any fees for “additional extension of time” from the deposit account. By Applicant’s language, the Office was given broad authorization to deduct fees from the deposit account for ANY purpose, beyond those related to extensions of time.

Applicant’s language is also conditional. As is plain to anyone who reads such responses, Applicant’s statement giving authorization to deduct fees is conditional as to any further fee that

may be required, for example, to prevent abandonment. Otherwise, the Applicant's statement would have no meaning. In the present situation, an RCE is clearly required.

Applicant acknowledges that Applicant's "Conditional" RCE could have been more clear, but also note that the MPEP rule regarding the Conditional RCE could also be more clear.

Thus, Applicant submits that the above-noted language from Applicant's February 22, 2008 response is sufficient to be treated as a "Conditional" RCE.

Applicant thus respectfully requests that any abandonment of the present Application be withdrawn.

IN THE ALTERNATIVE, APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION UNDER 37 CFR 1.137(b)

1. For the Petition fee
(X) Other than small entity - \$1,540, please charge to Deposit Account No. 11-1410.
 2. Reply
 - a. This is a request for a Request for Continued Examination (RCE) under 37 CFR 1.114. For the Request for Continued Examination fee of \$810 under 37CFR 1.17(c),
(X) please charge Deposit Account No. 11-1410.
 - b. The proposed response and extension fees to the above-noted Office Action in the form of an Amendment:
(X) has been filed previously on February 22, 2008.
 3. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.
- (X) Please charge any additional fees or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 13, 2008

By: /Michael Guiliana/
Michael A. Guiliana
Registration No. 42,611
Attorney of Record
Customer No. 20,995
(949) 760-0404

COPY

FS.20131US0A

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Katsumi Ochiai
Appl. No. : 10/795,765
Filed : March 8, 2004
For : REMOTE CONTROL SYSTEM
FOR MARINE DRIVE
Examiner : Edwin L. Swinehart
Group Art Unit : 3617

CERTIFICATE OF EFSWEB TRANSMISSION

I hereby certify that this correspondence, and any other attachment noted on the automated Acknowledgement Receipt, is being transmitted from within the Pacific Time zone to the Commissioner for Patents via the EFS Web server on:

February 22, 2008

(Date)

/Michael Guiliama/

Michael A. Guiliama, Reg. No. 42,611

AMENDMENT

Mail Stop AF

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

In response to the August 22, 2007 Office Action, Applicant respectfully submits the following amendments and comments in connection with the above-captioned application.

Amendments to the Claims begin on page 2 of this paper.

Remarks/Arguments begin on page 8 of this paper.

IN THE CLAIMS:

1. (Currently Amended) A control system for a marine drive comprising a change element that changes an operational condition of the marine drive, an actuator arranged to actuate the change element, a control device configured to control the actuator, ~~an operative device remotely placed from the control device, the operative device having a first movable member, a mechanically connecting member having a plurality of ends, one end of the connecting member coupled with the first movable member and another end of the mechanically connecting member coupled with a second movable member disposed remotely from the operative device, a signal generator configured to convert physical movement to a first command signal and to output [[a]] the first command signal to the control device, the signal generator being configured to be mechanically connectable to a mechanical remote control device such that physical movement of the remote control device causes physical movement of a part of the signal generator, the control device also being configured to be connectable to an electronic remote control device having a second signal generator configured to detect movement of a remote control lever and to output a second command signal based on a position of the second movable member, the movement of the second movable member being determined by the mechanically connecting member, the control device controlling the actuator based upon at least one of the first command signal and a second command signal from [[an]]the electronic remote device.~~

2. (Original) The control system as set forth in Claim 1, wherein the marine drive has an engine and a propulsion device powered by the engine, the engine has a throttle valve that regulates an amount of air to a combustion chamber of the engine, the change element is the throttle valve, and the operational condition is an output of the engine.

3. (Withdrawn) The control system as set forth in Claim 1, wherein the marine drive has an engine, a propulsion device powered by the engine, and a shift mechanism arranged to change a propulsion mode of the propulsion device, the change element being a member of the shift mechanism, and the operational condition is the propulsion mode of the propulsion device.

4. (Currently Amended) The control system as set forth in Claim 1, wherein the signal generator is configured to be connected to the mechanical remote control device with a push pull cableconnecting member is detachably coupled with the second movable member.

5. (Currently Amended) The control system as set forth in Claim 1, wherein the mechanical remote control device second-movable member is detachably coupled with the signal generator.

6. (Currently Amended) The control system as set forth in Claim 1, wherein the mechanical remote control device comprises first-movable member is a lever that is pivotable relative to a housing of the operative device.

7. (Currently Amended) The control system as set forth in Claim 6, wherein the signal generator has a pivotable shaft, the ~~second-movable member is a lever coupled~~ being connectable with the shaft to pivot with the shaft.

8. (Currently Amended) The control system as set forth in Claim 1, wherein the signal generator has a pivotable shaft, the ~~second-movable member is a lever coupled with the shaft~~ being connectable with the mechanical remote control device to pivot with the shaft.

9. (Original) The control system as set forth in Claim 1, wherein the signal generator is a potentiometer.

10. (Original) The control system as set forth in Claim 1 additionally comprising a second operative device remotely placed from the control device, the second operative device having a third movable member and a position sensing device, the position sensor configured to output a second command signal to the control device in accordance with a position of the third movable member, the control device controls the actuator based upon either the first or second command signal.

11. (Currently Amended) The control system as set forth in Claim 10, wherein the control device has an input unit, the signal generator or the ~~position sensing device is~~ electronic remote control device being selectively coupled to the input unit.

12. (Currently Amended) A control system for a marine drive having an engine comprising a throttle valve that regulates an amount of air to a combustion chamber of the engine, a throttle valve actuator arranged to actuate the throttle valve, a control device configured to control the throttle valve actuator, an operative device remotely placed from the control device, the operative device having a first movable member, configured to be connectable to a second moveable member disposed remotely from the operative device with a mechanically connecting member having a plurality of ends, one end of the connecting member coupled with

the first movable member and another end of the mechanically connecting member coupled with ~~[[a]]the second movable member disposed remotely from the operative device,~~ a signal generator configured to output a first command signal to the control device based on a position of the second movable member, the movement of the second movable member being determined by the mechanically connecting member, the control device controlling the throttle valve actuator based upon ~~at least one of the first command signal and~~ or a second command signal from an electronic remote device.

13. (Original) The control system as set forth in Claim 12, wherein the connecting member is detachably coupled with the second movable member.

14. (Original) The control system as set forth in Claim 12, wherein the second movable member is detachably coupled with the signal generator.

15. (Original) The control system as set forth in Claim 12, wherein the engine is disposed on the marine drive, the signal generator is affixed to the engine or the marine drive.

16. (Currently Amended) A control system for a marine drive comprising a change element that changes an operational condition of the marine drive, an actuator arranged to actuate the change element, a control device configured to control the actuator, a first operative assortment capable to communicate with the control device, the first operative assortment including a first operative device remotely placed from the control device, and a signal generator configured to output a first command signal to the control device, the first operative device having a first movable member, a mechanically connecting member having a plurality of ends, one end of the connecting member coupled with the first movable member and another end of the mechanically connecting member coupled with a second movable member disposed remotely from the operative device, the signal generator generating the first command signal in accordance with a position of the second movable member, the position of the second movable member being determined by the mechanically connecting member, and a second operative assortment capable to communicate with the control device, the second operative assortment comprising a electronic remote device configured to send a second command signal to the control device, the control device controlling the actuator based upon ~~at least one of the first~~ [[and]]or second command signal.

Appl. No. : 10/795,765
Filed : March 8, 2004

17. (Original) The control system as set forth in Claim 16, wherein the control device has an input unit, the signal generator or the position sensing device is selectively connected to the input unit.

18. (Previously Presented) A control system for a marine drive comprising a change element that changes an operational condition of the marine drive, an actuator arranged to actuate the change element, a control device configured to control the actuator, a first operative assortment capable to communicate with the control device, the first operative assortment including a first operative device remotely placed from the control device, and a signal generator configured to output a first command signal to the control device, the first operative device having a first movable member, a mechanically connecting member having a plurality of ends, one end of the connecting member coupled with the first movable member, the signal generator having a second movable member, another end of the connecting member coupled with the second movable member, the second movable member moving along with the first movable member when the first movable member is operated, the signal generator generating the first command signal in accordance with a position of the second movable member, and a second operative assortment capable to communicate with the control device, the second operative assortment including a second operative device that has a third movable member, and a position sensing device that senses a position of the third movable member, the position sensing device configured to output a second command signal to the control device, the signal generator and the position sensing device selectively connected to the control device, the control device controlling the actuator based upon either the first or second command signal, wherein the control device has an input unit, the signal generator or the position sensing device is selectively connected to the input unit the control system also includes a visual or audible indicator that indicates none of the signal generator and the position sensing device is connected to the input unit.

19. (Currently Amended) A control system for a marine drive comprising a change element that changes an operational condition of the marine drive, an actuator arranged to actuate the change element, a control device configured to control the actuator, an operative device remotely placed from the control device, the operative device having a movable member, and a signal generator configured to output a command signal to the control device, means for mechanically connecting the movable member to the signal generator, the signal generator

generating a first command signal in response to a movement of the movable member, the control device controlling the actuator based upon ~~at least one of~~ the first command signal ~~[[and]]~~ or a second command signal from an electronic remote device.

20. (Currently Amended) A control system for a marine drive having an engine comprising a throttle valve that regulates an amount of air to a combustion chamber of the engine, a throttle valve actuator arranged to actuate the throttle valve, a control device configured to control the throttle valve actuator, an operative device remotely placed from the control device, the operative device having a movable member, and a signal generator configured to output a first command signal to the control device, means for mechanically connecting the movable member to the signal generator, the signal generator generating the first command signal in response to a movement of the movable member, the control device controlling the throttle valve actuator based upon ~~at least one of~~ the first command signal ~~[[and]]~~ or a second command signal from an electronic remote device.

21. (Currently Amended) A watercraft comprising a hull, a marine drive arranged to propel the hull, a change element that changes an operational condition of the marine drive, an actuator arranged to actuate the change element, a control device configured to control the actuator, an operative device remotely placed from the control device, the operative device having a first movable member, a mechanically connecting member having a plurality of ends, one end of the connecting member coupled with the first movable member and another end of the mechanically connecting member coupled with a second movable member disposed remotely from the operative device, a signal generator configured to output a first command signal to the control device based on the position of the second movable member, the movement of the second movable member being determined by the mechanically connecting member, the control device controlling the actuator based upon ~~at least one of~~ the first command signal ~~[[and]]~~ or a second command signal from an electronic remote device.

22. (Previously Presented) A method for controlling a marine drive comprising selecting a first control system that mechanically transmits a movement of a first movable member to a signal generator that generates a first command signal or an electronic remote device which generates a second command signal, and controlling an actuator that actuates a

Appl. No. : **10/795,765**
Filed : **March 8, 2004**

change element based upon at least one of first and second command signals, the change element changing the operational condition of the marine drive.

23. (Original) The method as set forth in Claim 22 additionally comprising determining whether the signal generator or the position sensing device is connected to a control device that controls the actuator.

Appl. No. : **10/795,765**
Filed : **March 8, 2004**

REMARKS

Claims 1, 2, and 4-23 remain pending in the present Application, Claims 1, 4-8, 11, 12, 16, and 19-21 having been amended. The claims set forth above include markings to show the changes made by way of the present amendment, deletions being in ~~strikeout~~ or [[double brackets]] and additions being underlined.

In response to the Office Action mailed August 22, 2007 Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the following comments.
Claims 1, 2, 4-17, And 19-23 Fully Comply With The Requirements Of 35 U.S.C. § 112, First Paragraph

Claims 1, 2, 4-17, and 19-23 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicant respectfully traverses the present rejection.

Applicant understands that the Examiner's position is that the specification does not illustrate or disclose an embodiment in which both a mechanical remote device and an electrical remote device are "useable together" to control a marine drive. Rather, the Office Action indicates that the Specification only discloses that the electronic and mechanical embodiments are only useable alternatively, not together. Applicant respectfully disagrees with the Examiner. However, in order to expedite prosecution of the present Application, Applicant has amended Claims 1, 12, 16, 19, 20, and 21 to recite that the associated controller uses a mechanical input **or** an electronic input.

More specifically, Applicant has amended Claims 12, 16, 19, 20, and 21 to recite that the controller operated based on a mechanical **or** electronic input devices. As noted above, the Office Action admits that the Specification discloses that the use of the electronic and mechanical inputs "alternatively only." Office Action, page 3, part 5. Thus, Applicant believes the outstanding rejection of Claims 1, 2, 4-17, and 19-21 is moot.

With regard to Claims 1 and 22, Applicant would like to note that Claim 1 has been amended to recite "a signal generator configured to convert physical movement to a first command signal and to output the first command signal to the control device, the signal generator being configured to be mechanically connectable to a mechanical remote control device such that physical movement of the remote control device causes physical movement of a part of

Appl. No. : 10/795,765
Filed : March 8, 2004

the signal generator, the control device also being configured to be connectable to an electronic remote control device having a second signal generator configured to detect movement of a remote control lever and to output a second command signal, the control device controlling the actuator based upon at least one of the first command signal and a second command signal from the electronic remote device.”

Thus, Claim 1 does not require that both electronic and mechanical remote control devices are **connected** to the control device. Additionally, Claim 1 does not require that the control device actually control an actuator based on both electronic and mechanical input. Rather, Claim 1 covers either and is broad enough to cover a system that uses both.

With regard to Claim 22, Applicant would like to note that Claim 22 does not recite that the electronic and mechanical input devices are used together. Rather, Claim 22 recites “controlling an actuator that actuates a change element based upon at least one of first and second command signals.”

Applicant thus submits that Claims 1, 2, 4–17, and 19–23 fully comply with the requirement of 35 U.S.C. § 112, first paragraph.

CONCLUSION

The undersigned has made a good faith effort to response to all of the rejections and objections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant’s attorney in order to resolve such issue promptly.

Appl. No. : **10/795,765**
Filed : **March 8, 2004**

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: February 22, 2008 By: /Michael Guiliana/
Michael A. Guiliana
Registration No. 42,611
Attorney of Record
Customer No. 20,995
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404

2903685
091106
4744613
011108